



EV 07 332980

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No. 10/047,198
Filing Date October 26, 2001
Inventor Gilbert, et al.
Assignee Pyrotek, Inc.
Group Art Unit 3745
Examiner Not yet assigned
Attorney's Docket No. PY2-023
Title: Molten Metal Pump Particle Passage System

**PETITION FOR DETERMINATION THAT FIGURES 11 AND 12,
SHEET 6 OF 8, WAS RECEIVED BY THE U.S. PTO**

To: Assistant Commissioner for Patents
Washington, D.C. 20231

From: Mark W. Hendricksen (Tel. 509-624-4276; Fax 509-838-3424)
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Adjustment date: 04/07/2003 AKELLEY
04/23/2002 HNDOR1 00000085 10047198
01 FC:122
Repln. Ref: 04/07/2003 AKELLEY 0010384400
DAH:230925 -Name/Number:10047198
FC: 9204

Application filed on April 17, 2002 with a photocopy of the postcard in question which proves without a doubt that 8 sheets of figures, including sheet 6 of 8, which contained figures 11 and 12, were filed and received by the U.S. Patent and Trademark Office on October 26, 2001.

Applicant expected that filing a declaration by an attorney licensed to practice would be sufficient to prove the U.S. Patent Office issued a return postcard as appropriate, but apparently the Petitions Branch does not agree and even though the Patent Office or U.S. Postal Service badly darkened the postcard, a photograph has been take of it, and it is attached to this Petition.

10/03/2002 NMOHAMH1 00000026 10047198

01 FC:122 130.00 OP
Adjustment date: 04/07/2003 AKELLEY
10/09/2002 NMOHAMH1 00000026 10047198
01 FC:1460 130.00 OP
Repln. Ref: 04/07/2003 AKELLEY 0011000200
DAH:230925 -Name/Number:10047198
FC: 9204 \$130.00 CR

Furthermore, in the decision dismissing the petition, it is stated that "the Office considers the date the paper or fee is shown to be deposited in "Express Mail" to be the "Date-in" on the Express Mail label. That is the date that verifies the package was actually mailed. In this instance, the only purpose for petitioner to submit the express mail label would be to show that the application was deposited and received in the USPTO but, the contents of that package cannot be ascertained." Applicant strongly disagrees and submits that 37 C.F.R. §1.10 establishes the filing date for all figure pages 1 through 8. The undersigned states and alleges:

1. This Petition and the preceding Petition were filed promptly after we became aware the Office did not accord a filing date for page 6 (Figures 11 and 12);
2. The number of the Express Mail mailing label was placed on the papers or fees as also shown in the "Ex Post" Declaration. This petition includes a true copy, a photograph, of the Express Mail mailing label showing the date in. The number of the Express Mail mailing label was placed on each of the papers prior to the original mailing by Express Mail.

The applicant submits that under 37 C.F.R. §1.10 this is conclusive proof that each of the papers, including page 6 of the drawings, page 6/8, including Figures 11 and 12, was filed on October 26, 2001.

The applicant filed the above-referenced U.S. patent application on October 26, 2001 and included in the filing were 8 sheets of figures, labeled

figures 1 through 15. Although the figure number 7 was skipped, there were 14 figures on 8 drawing sheets which were filed. The drawings were mis-numbered so that there was no figure 7; however, sheet 6 of 8 was filed and contained figures 11 and 12. The PTO has indicated figures 11 and 12 were omitted items.

The applicant hereby petitions that the U.S. Patent & Trademark Office determine that the items were actually received by the U.S. PTO, based upon the Declaration of Mark Hendricksen and the documents provided in support thereof.

37 C.F.R. §1.10(a) provides:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation.

In this case, the documentation attached to the Declaration of Mark Hendricksen clearly establishes that the proper Express Mail procedure was followed; that the USPS properly initialed acceptance on October 26, 2001; the Ex Post Declaration clearly shows 8 sheets of formal drawings, Figs. 1-15; and the postcard received back clearly shows that 8 sheets of formal drawings were provided. A photograph of the post card is submitted herewith. The drawings are clearly labeled sheets 1 through 8, and sheet 6 included figures 11 and 12.

Based on the foregoing, the applicant has complied with the rules and hereby petitions that the U.S. Patent & Trademark Office determine that the

omitted items, namely figures 11 and 12, were received by the U.S. PTO on October 26, 2001.

In accordance with the requirements, the applicant has submitted a petition fee of \$130.00, and due to the evidence that the deposit was made, the applicant hereby respectfully requests that the petition fee be refunded.

Respectfully submitted,

Dated: 10/1/02

By: 
Mark W. Hendricksen
Reg. No. 32,356